

SFY 2003 Community Services Performance Contract for Operating CSBs and Behavioral Health Authorities

7.0 Subcontracting

- 7.1 Subcontracting:** The Board may subcontract or out-source any or all of the requirements of this contract through a subcontractor, agent, or employee. However, the Board shall remain fully and solely responsible and accountable for meeting all of its obligations and duties under this contract, including all services, deliverables, terms, and conditions, without regard to its subcontracting or out-sourcing arrangements. All subcontracting must comply with applicable state and federal statutes, regulations, and guidelines, including the Virginia Public Procurement Act. All arrangements for the provision of subcontracted activities shall be formalized in a written contract between the Board and the subcontractor. The Board agrees to provide copies of such contracts or other documents to the Department upon request.
- 7.2 Subcontracts:** The written subcontract must, as applicable and at a minimum, state the activities to be performed, the time schedule and duration, the policies and requirements that are applicable to the subcontractor, the maximum amount of money for which the Board may become obligated, and the manner in which the subcontractor will be compensated, including payment time frames. Subcontracts shall not contain provisions that require a subcontractor to make payments or contributions to the Board as a condition of doing business with the Board. The Board shall not include, assess, or otherwise allocate its own administrative and management expenses in its contracts with subcontractors.
- 7.3 Subcontractor Compliance:** The Board shall require that its subcontractors comply with the requirements of all applicable federal and state statutes, regulations, and policies that affect or are applicable to the services covered by this contract. The Board shall require that any agency, organization, or individual with which it intends to subcontract services covered by this contract is fully qualified and possesses and maintains current all necessary licenses or certifications from the Department and other applicable regulatory entities before it enters into the subcontract and places consumers in the subcontracted service. The Board shall require all subcontractors that provide services to consumers and are licensed by the Department to maintain compliance with the Human Rights Regulations promulgated by the State Board. The Board shall, to the greatest extent practicable, require all other subcontractors that provide services purchased by the Board for consumers and are not licensed by the Department to develop and implement policies and procedures that comply with the Board's human rights policies and procedures or to allow the Board to handle allegations of human rights violations on behalf of the Board's consumers who are receiving services from such subcontractors. When the Board funds providers such as family members, neighbors, consumers, or other individuals to serve consumers, the Board may comply with these requirements on behalf of such providers, if both parties agree.

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- 7.4 Subcontractor Dispute Resolution:** The Board shall include contract dispute resolution procedures in its contracts with subcontractors.
- 7.5 Quality Improvement Activities:** The Board shall, to the extent practicable, incorporate specific language in its subcontracts regarding the quality improvement activities of the Board. Each vendor that subcontracts with the Board should have its own quality improvement system in place or should participate in the Board's quality improvement program.

8.0 Special Terms and Conditions

- 8.1 Availability of Funds:** It is understood and agreed between the parties herein that the Department and the Board shall be bound hereunder only to the extent of the funds available or that may hereafter become available for the purposes of this contract. If the Board decides that it cannot comply with a particular requirement in this contract due to an insufficiency of performance contract funds, it must inform the Department of this situation, identifying the requirement and providing the information required by step 2 of the Sufficiency of Funds Disagreement Review Process in Attachment 5.3.4 to this contract, within 30 days of its decision. The Department will then make a determination as to the sufficiency of performance contract funds for meeting the particular requirement. The Board can dispute this determination under section 8.5 of this contract and use the dispute resolution process in section 8.8 to address its disagreement with the Department's determination.
- 8.2 Prevailing Laws:** All services provided by the Board pursuant to this contract shall be performed in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Board shall not receive payment for services found by the Department to be performed in violation of any applicable federal, state, or local law, ordinance, rule, or regulation.
- 8.3 Authorities:** Nothing in this contract shall be construed as authority for either party to make commitments that will bind the other party beyond the Scope of Work in section 5.0 of this contract or other provisions contained herein.
- 8.4 Compliance:** The Department may utilize a variety of remedies, including but not limited to requiring a corrective action plan, withholding payment, and terminating the contract, to assure Board compliance with this contract. Specific remedies, described in Attachment 5.7.1 of this contract, shall be taken if the Board fails to satisfy the reporting requirements in this contract. The Department may conduct or contract for a compliance review of provisions of this contract at any time.

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- 8.5 Disputes:** Resolution of disputes arising from Department contract compliance review and performance management efforts or from actions by the Board related to this contract may be pursued through the dispute resolution process in section 8.8, which may be used to appeal only the following conditions:
1. reduction or withdrawal of state general or federal funds, unless funds for this activity are withdrawn by action of the General Assembly or federal government, or adjustment of allocations or payments pursuant to section 4.0 of this contract;
 2. termination or suspension of the performance contract, unless funding is no longer available;
 3. refusal to negotiate or execute a contract modification;
 4. disputes arising over interpretation or precedence of terms, conditions, or scope of the performance contract;
 5. determination that an expenditure is not allowable under this contract;
 6. determination that the performance contract is void, and
 7. determinations of sufficiency of performance contract funds to meet the requirements of this contract.
- 8.6 Termination:** This contract may be terminated in the following circumstances.
1. The Department may terminate this contract immediately, in whole or in part, at any time during the contract period if funds for this activity are withdrawn or not appropriated by the General Assembly or are not provided by the federal government. In this situation, the obligations of the Department and the Board under this contract shall cease immediately.
 2. In accordance with § 37.1-198 of the *Code of Virginia*, the Department may terminate all or a portion of this contract, after unsuccessful use of the remediation process described in section 8.7 and after affording the Board an adequate opportunity to use the dispute resolution process described in section 8.8 of this contract. A written notice specifying the cause must be delivered to the Board's board chairman and executive director at least 50 business days prior to the date of actual termination of the contract. In the event of contract termination under these circumstances, only payment for allowable services rendered by the Board shall be made by the Department.
- 8.7 Remediation Process:** The remediation process referenced in § 37.1-198 of the *Code of Virginia* is an informal procedure that will be used by the Department and the Board to address a particular situation or condition identified by the Department that may, if unresolved, result in termination of the contract, in accordance with the provisions of section 8.6 of this contract. The details of this process shall be developed by the parties and included in Attachment 8.7 to this contract. This attachment shall describe the situation or condition and include the performance measures that will document a satisfactory resolution of the situation or condition.

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8.8 Dispute Resolution Process: Disputes arising from any of the conditions in section 8.5 shall be resolved using the following process.

1. Within 10 business days of the Board's identification or receipt of a disputable action taken by the Department or of the Department's identification or receipt of a disputable action taken by the Board, the party seeking resolution of the dispute shall submit a written notice to the Department's Director of Community Contracting, stating its desire to use the dispute resolution process. The written notice must describe the condition, nature, and details of the dispute and the relief sought by the party.
2. The Director of Community Contracting shall review the written notice and determine if the dispute falls within the conditions listed in section 8.5. If it does not, the Director of Community Contracting shall notify the party in writing within five business days of receipt of the written notice that the dispute is not subject to this dispute resolution process. The party may appeal the Director's determination to the Commissioner in writing within five business days of its receipt of the Director's written notification.
3. If the dispute falls within the conditions listed in section 8.5, the Director of Community Contracting shall notify the party within five business days of receipt of the written notice that a panel will be appointed within 10 business days to conduct an administrative hearing.
4. Within 10 business days of notification to the party, a panel of three or five disinterested individuals shall be appointed to hear the dispute. The Board shall appoint one or two members; the Commissioner shall appoint one or two members; and the appointed members shall appoint the third or fifth member. Each panel member will be informed of the nature of the dispute and be required to sign a statement indicating that he has no interest in the dispute. Any person with an interest shall be relieved of panel responsibilities and another person shall be selected as a panel member.
5. The Director of Community Contracting will contact the parties by telephone and arrange for a panel hearing at a mutually convenient time, date, and place. The hearing shall be scheduled not more than 10 business days after the appointment of panel members. Confirmation of the time, date, and place will be communicated to all parties at least five business days in advance of the hearing.
6. The panel members shall elect a chairman and the chairman shall convene the panel. The party requesting the panel hearing shall present evidence first, followed by the presentation of the other party. The burden shall be on the party requesting the panel hearing to establish that the disputed decision or action was incorrect and to present the basis in law, regulation, or policy for its assertion.

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The panel may hear rebuttal evidence after the initial presentations by the Board and the Department. The panel may question either party in order to obtain a clear understanding of the facts.

7. Subject to provisions of the Freedom of Information Act, the panel shall convene in closed session at the end of the hearing, and it shall issue written recommended findings of fact within five business days of the hearing. The recommended findings of fact shall be submitted to the Commissioner for a final decision.
8. The findings of fact shall be final and conclusive and shall not be set aside by the Commissioner unless they are (1) fraudulent, arbitrary, or capricious; (2) so grossly erroneous as to imply bad faith; or (3) in the case of termination of the contract due to failure to perform, the criteria for performance measurement are found to be erroneous, arbitrary, or capricious.
9. The final decision shall be sent by certified mail to both parties no later than 40 business days after receipt of the written notice from the party invoking the dispute resolution process.
10. Multiple appeal notices shall be handled independently and sequentially so that an initial appeal will not be delayed by a second appeal.
11. The Board or the Department may seek judicial review of the final decision as provided in § 11-71 of the *Code of Virginia* in the Circuit Court for the City of Richmond within 30 days of receipt of the final decision.

8.9 Closeout

1. In the event that this contract is terminated for any reason, the Board shall cooperate with the Department to implement a transition plan for consumers served under this contract. The Department shall have the sole authority for approving the adequacy of the transition plan, including providing for the financing of said plan, with the Board being responsible for supplying any required local matching funds. The transition plan shall set forth the process and time frames for the transition. This plan shall be in effect and the Board's obligations under this contract shall not cease until successful completion of the transition of all consumers to other boards.
2. If this contract is terminated or ends, the Board shall provide within 90 days all financial, performance, and other reports and information to the Department that are required as a condition of this contract. In the event of termination of this contract, payment for any and all valid claims by subcontractors for services rendered to consumers prior to the effective termination date shall be the responsibility of the Board. Should additional statistical or management

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information be required by the Department when this contract ends or is terminated, the Department shall give at least 45 calendar days notice.

Additionally, a preliminary written estimate of anticipated accounts payable to the Department or accounts receivable from the Department shall be submitted within 30 days following the completion of the contract termination transition plan using Department and local funds as provided in this contract.

8.10 Audit Records: The Board shall retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Department, its authorized agents, and state auditors shall have full access to and the right to examine any of said materials during said period.

9.0 Department Responsibilities: The Department has the following responsibilities associated with this contract. While most of these responsibilities are reflected in sections 4.0, 5.0, 6.0, and 8.0 of the contract, they are stated here for ease of reference.

9.1 Funding: The Department shall disburse the state general and federal funds displayed in Exhibit A, subject to the Board's compliance with the provisions of this contract. The Department shall make payments in accordance with the provisions of section 4.2 of and Attachment 6.2.2 to this contract.

9.2 State Facility Services: The Department shall make state facility inpatient services available, if appropriate, through its mental health and mental retardation facilities, when residents of the Board's service area are in need of such services. In accordance with the provisions of section 5.5.4, the Department shall track, monitor, and report on the Board's utilization of state mental health facility beds. The Department shall provide data to the Board about consumers from its service area who are served in state facilities. The Department shall manage its mental health and mental retardation facilities to support service linkages with the Board, including adherence to the applicable provisions of Attachment 5.3 to this contract and the *Discharge Planning Protocols*, incorporated by reference as part of this contract. The Department shall assure that its mental health and mental retardation facilities use teleconferencing technology to the extent practicable and whenever possible to facilitate the Board's participation in treatment planning activities and the Board's fulfillment of its discharge planning responsibilities for its consumers in state facilities. In accordance with the applicable provisions of Attachment 5.3.4 to this contract, the Department shall resolve disputes about patient or resident readiness for discharge and determine the sufficiency of performance contract funds available to the Board to serve individuals who are ready for discharge from state facilities. The Department shall involve the Board, as applicable and to the greatest extent possible, in collaborative planning activities regarding the future role and structure of the state facility system.

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- 9.3 Human Rights:** The Department shall operate the statewide human rights system described in the current Human Rights Regulations, monitor compliance with the human rights requirements in those regulations, and conduct reviews and investigations referenced in section 5.6.1 of this contract. The Department's human rights staff shall be available on a daily basis, including weekends and holidays, to receive reports of allegations of violations of a consumer's human rights.
- 9.4 Licensing:** The Department shall license programs and services that meet the requirements of the current Licensing Regulations and conduct licensing reviews in accordance with the provisions of those regulations. The Department shall respond in a timely manner to issues raised by the Board regarding coordinating and monitoring services provided by independent licensed providers, pursuant to section 5.3.9 of this contract.
- 9.5 Policies and Procedures:** The Department shall revise, update, and provide copies of the procurement, uniform cost report, financial management, and reimbursement manuals cited in sections 6.4.2, 6.5.2, 6.5.8, and 6.6.5. The Department shall provide copies of relevant regulations and policies promulgated by the State Board.
- 9.6 Reviews:** The Department shall review and take appropriate action on audits submitted by the Board in accordance with the provisions of sections 6.5.3 and 6.5.5. The Department may conduct procurement, financial management, reimbursement, and human resource management reviews of the Board's operations, in accordance with the provisions of sections 6.4.3, 6.5.10, 6.6.6, and 6.7.6 of this contract.
- 9.7 Planning:** The Department shall conduct long-range planning activities related to state facility and community services, including the preparation and dissemination of the Comprehensive State Plan required by § 37.1-48.1 of the *Code of Virginia*.
- 9.8 Information Technology:** The Department shall operate and provide technical assistance and support, to the extent practicable, to the Board about the CARS-ACCESS information system, referenced in section 5.7. The Department shall operate the FIMS and the Performance-Based Prevention System referenced in section 5.7.3. The Department shall develop and implement communication, compatibility, and network protocols in accordance with the provisions of section 6.8 of this contract. Pursuant to § 37.1-197 of the *Code of Virginia*, the Department shall implement procedures to protect the confidentiality of data accessed in accordance with section 5.5.2 of this contract. The Department shall ensure that any software application that it issues to the Board for reporting purposes associated with this contract has been field tested by a reasonable number of Boards to assure compatibility and functionality with the major IT systems used by Boards, is operational, and is provided to the Board sufficiently in advance of reporting deadlines to allow the Board to install and run the software application.

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- 9.9 Quality of Care:** The Department with participation from the Board shall identify consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures for inclusion in this contract, pursuant to § 37.1-198 of the *Code of Virginia*, and collect information about these measures. The Department may provide, within the resources available for this purpose in the Department or its facilities, professional consultations to the Board upon request for clinically complex or difficult or medically-complicated cases when consumers or their legally authorized representatives have requested second opinions and the Board is not able to provide those second opinions within its resources.
- 9.10 System Leadership Council:** The Department shall establish a System Leadership Council, which will include representatives of the Department, a state mental health facility director, a state training center director, up to ten representatives of community services boards, and two representatives of local governments. The Department shall convene this council at least quarterly to address the tasks identified in section 5.5.7.
- 9.11 Communication:** The Department shall provide technical assistance and written notification regarding changes in funding source requirements, such as regulations, policies, procedures, and interpretations, to the extent that those changes are known to the Department. The Department shall resolve, to the extent practicable, inconsistencies in state agency requirements that affect requirements in this contract. The Department shall respond in a timely manner to written correspondence from the Board that requests information or a response.
- 9.12 Reporting Requirements:** The Department shall work with representatives of Boards to ensure that current data and reporting requirements are consistent with each other and with the current Core Services Taxonomy, Individualized Client Data Elements (ICDE), and TEDS and other federal reporting requirements. The Department also shall work with representatives of Boards in planning and developing any additional reporting or documentation requirements beyond those identified in this contract to ensure that such requirements are consistent with the current Core Services Taxonomy, ICDE, and TEDS and other federal reporting requirements. The Department shall work with representatives of Boards to identify possible further simplification and streamlining changes in data and reporting requirements that could be included in this contract through amendments during the contract term.
- 9.13 Discharge Assistance Projects:** The Department shall adhere to provisions of the Discharge Assistance Project Procedures in Attachment 5.9.1 to this contract for projects that it funds.
- 9.14 Providing Information:** The Department shall provide any information requested by the Board that is related to performance of or compliance with this contract in a timely manner, considering the type, amount, and availability of the information requested.

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- 9.15 Compliance with State and Federal Statutes, Regulations, and Requirements:** The Department shall comply with applicable state and federal statutes and administrative rules and regulations as they affect the operation of this contract. If any laws, administrative rules or regulations that become effective after the execution date of this contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract. The Department and its mental health facilities and mental retardation training centers shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder as they become effective.

10.0 General Terms and Conditions

- 10.1. Applicable Laws and Courts:** This contract shall in all respects be governed by, and construed in accordance with, the laws of the United States and the laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth.
- 10.2. Employment Anti-Discrimination:** By execution of this contract, the Board certifies that it will conform to the applicable provisions of Title VII of the Federal Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, Sections 503 and 504 of the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974, the Age Discrimination Act of 1975, the Americans With Disabilities Act of 1990, the Virginians With Disabilities Act, the Virginia Fair Employment Act of 1975, the Civil Rights Act of 1991, regulations issued by the Federal Granting Agencies, and other applicable statutes and regulations, including § 2.2-4310 of the *Code of Virginia*. During the performance of this contract, the Board agrees as follows.
1. The Board will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Board. The Board agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The Board, in all solicitations or advertisements for employees placed by or on behalf of the Board, will state that the Board is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

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10.3 Service Delivery Anti-Discrimination: By execution of this contract, the Board certifies that it will conform to the applicable provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act of 1990, the Virginians With Disabilities Act, the Civil Rights Act of 1991, regulations issued by the U.S. Department of Health and Human Services pursuant thereto, other applicable statutes and regulations, and paragraphs 1 and 2 below.

1. Services operated or funded by the Board have been and will continue to operated in such a manner that no person will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under such services on the grounds of race, color, national origin, age, gender, or disability.
2. The Board and its direct and contractual services will include these assurances in their services policies and practices and will post suitable notices of these assurances at each of their facilities in areas accessible to consumers.
3. The Board will periodically review its operating procedures and practices to insure continued conformance with applicable statutes, regulations, and orders related to non-discrimination in service delivery.

10.4 Amendments: This contract, including all exhibits, attachments, and incorporated documents, constitutes the entire agreement between the Department and the Board. The services identified in the Scope of Work and Exhibit A may be amended in accordance with the performance contract revision instructions, contained in Attachment 10.4 to this contract. Other provisions of this contract may be amended only by mutual agreement of the parties, in writing and signed by the parties hereto.

10.5 Liability: The Board shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance of this contract. The Board shall obtain and maintain sufficient liability insurance to cover claims for bodily injury and property damage and suitable administrative or directors and officers liability insurance. These responsibilities may be discharged by means of a proper and sufficient self-insurance program operated by the state or a city or county government. The Board shall provide a copy of any such policy or program to the Department upon request. This contract is not intended to, and does not, create by implication or otherwise any basis for any claim or cause of action by a person or entity not a party to this contract, arising out of any claimed violation of any provision of this contract.

10.6 Relationship: This contract shall not be construed to establish any employer-employee or principal-agent relationship between employees of the Board or its board of directors and the Department or between employees or the board of directors of any of the Board's subcontractors and the Department.